

Calendar No. 294

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
111-144

WATER TRANSFER FACILITATION ACT

MARCH 2, 2010.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 1759]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1759) to authorize certain transfers of water in the Central Valley Project, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Water Transfer Facilitation Act of 2009”.

SEC. 2. AUTHORIZATION OF WATER TRANSFERS, CENTRAL VALLEY PROJECT.

(a) IN GENERAL.—Subject to subsection (b), the following voluntary water transfers shall be considered to meet the conditions described in subparagraphs (A) and (I) of section 3405(a)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4709):

(1) A transfer of irrigation water among Central Valley Project contractors from the Friant, San Felipe, West San Joaquin, and Delta divisions.

(2) A transfer from a long-term Friant Division water service or repayment contractor to a temporary or prior temporary water service contractor within the place of use in existence on the date of the transfer, as identified in the Bureau of Reclamation water rights permits for the Friant Division.

(b) CONDITION.—A transfer under subsection (a) shall comply with all applicable Federal and State law.

SEC. 3. FACILITATION OF WATER TRANSFERS, CENTRAL VALLEY PROJECT.

As soon as practicable after the date of enactment of this Act, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service and the Commissioner of the Bureau of Reclamation, using such sums as are necessary, shall initiate and complete, on the most expedited basis practicable, programmatic documentation to facilitate voluntary water transfers within the Central Valley Project, consistent with all applicable Federal and State law.

SEC. 4. REPORT ON CENTRAL VALLEY PROJECT WATER TRANSFERS.

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Commissioner of the Bureau of Reclamation (referred to in this section as the “Commissioner”) shall submit to the appropriate committees of Congress a report that—

(1) describes the status of efforts to help facilitate and improve the water transfers under this Act;

(2) evaluates potential effects of this Act on Federal programs, Indian tribes, Central Valley Project operations, the environment, groundwater aquifers, refuges, and communities; and

(3) provides recommendations on ways to facilitate, and improve the process for—

(A) water transfers within the Central Valley Project; and

(B) water transfers between the Central Valley Project and other water projects in the State of California.

(b) **UPDATES.**—Not later than the end of the water year in which the report is submitted under subsection (a) and each of the 4 water years thereafter, the Commissioner shall update the report.

PURPOSE

The purpose of S. 1759 is to authorize certain transfers of water in the Central Valley Project.

BACKGROUND AND NEED

The Central Valley Project (CVP) was originally authorized in the 1930s to provide a water supply for irrigation and some municipal purposes, for flood control, to improve navigation, and to generate power. The Bureau of Reclamation manages and operates the project. The Central Valley Project Improvement Act (CVPIA) (sections 3401 et seq. of Public Law 102–575) was enacted in 1992 and required certain changes in management of the CVP, particularly for the protection, restoration, and enhancement of fish and wildlife, and for other purposes, including the facilitation of transfers of water within and outside the CVP service area. Together with the California State Water Code, section 3405(a)(1) of the CVPIA prescribes the conditions under which CVP water is transferable.

S. 1759, as amended, provides that transfers of irrigation water among CVP contractors from the Friant, San Felipe, West San Joaquin, and Delta divisions, which are primarily located south of the San Joaquin Delta, and certain transfers within the Friant Division service area, shall be considered to meet the existing requirements of subparagraphs (A) and (I) of section 3404(a)(1) of the CVPIA. Those subparagraphs relate to historical and consumptive water use. S. 1759 does not affect any other provisions of the CVPIA and does not change the status quo regarding the Bureau of Reclamation’s programs to transfer CVP water that is not covered by this bill. Testimony provided to the Committee indicates that S. 1759, as amended, will expedite the approval of additional transfers of certain CVP water without adverse impact to CVP operations, other water users, federal programs, Indian tribes, the environment or existing requirements of the CVPIA.

LEGISLATIVE HISTORY

Senator Feinstein and Senator Boxer introduced S. 1759 on October 7, 2009. On November 5, 2009, the subcommittee on Water and Power held a hearing on S. 1759. At its meeting on December 16, 2009, the Committee on Energy and Natural Resources ordered S.

1759 favorably reported, with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on December 16, 2009, by voice vote of a quorum present, recommends that the Senate pass S. 1759, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 1759, the Committee adopted an amendment in the nature of a substitute. The amendment includes a number of technical changes and new provisions that clarify the intent of the original bill. The amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 identifies the short title of the bill as the “Water Transfer Facilitation Act of 2009”.

Section 2(a) provides that transfers of water among specific categories of CVP contractors shall be considered to meet the existing requirements of subparagraphs (A) and (I) of section 3404(a)(1) of the CVPIA.

Section 2(a)(1) relates to transfers of irrigation water among CVP contractors from the Friant, San Felipe, West San Joaquin, and Delta divisions and irrigation water transferred pursuant to this provision would remain within a particular division.

Section 2(a)(2) relates to transfers of water from a long-term Friant Division water service or repayment contractor to certain temporary or prior temporary water service contractors.

Section 2(b) requires that transfers of water that occur pursuant to the terms of the legislation must comply with all applicable state and federal law. Section 2(b) of S. 1759, as introduced, included a specific reference to the San Joaquin River Settlement and the San Joaquin River Restoration Settlement Act. The amendment of section 2(b) to a more general provision is intended to include the original provisions and also ensure that transfers of water pursuant to the provisions of S. 1759 comply with all other applicable state and federal law.

Section 3 requires the Department of the Interior to complete programmatic documentation, on the most expedited basis practicable, to facilitate voluntary water transfers within the CVP consistent with all applicable state and federal law. The programmatic documentation would include environmental documentation relating to the Endangered Species Act.

Section 4 requires the Bureau of Reclamation to submit a report, within 180 days of enactment, to the appropriate committees of Congress that describes the status of efforts to help facilitate and improve the water transfers included under the act, evaluates potential effects of the act on Federal programs, Indian tribes, CVP operations, the environment, groundwater, aquifers, refuges, and communities, and provides recommendations on ways to facilitate and improve the process for water transfers within the CVP and

water transfers between the CVP and other water projects. The report shall be updated every year for 5 years following enactment.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

S. 1759—Water Transfer Facilitation Act of 2009

Summary: S. 1759 would facilitate voluntary transfers of water supplies between certain users of the Central Valley Project (CVP) in California. Based on information from the Bureau of Reclamation (the Bureau) and assuming the availability of appropriated funds, CBO estimates that implementing S. 1759 would increase discretionary spending by \$4 million over the 2011–2015 period. In addition, CBO estimates that the bill would increase offsetting receipts (a credit against direct spending) by \$7 million over the 2011–2015 period and \$12 million over the 2011–2020 period. Enacting this legislation would not affect revenues.

Pay-as-you-go procedures apply because enacting the legislation would reduce direct spending.

S. 1759 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1759 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011–2015	2011–2020
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	4	0	0	0	0	0	0	0	0	0	4	4
Estimated Outlays	2	1	1	0	0	0	0	0	0	0	4	4
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority ..	–2	–2	–1	–1	–1	–1	–1	–1	–1	–1	–7	–12
Estimated Outlays	–2	–2	–1	–1	–1	–1	–1	–1	–1	–1	–7	–12

Basis of estimate: For this estimate, CBO assumes that this legislation will be enacted in fiscal year 2010. Under current law, CVP contractors pay certain fees to the Reclamation Fund for water they consume. Amounts in the Reclamation Fund are available to federal agencies subject to provisions in appropriation acts. Contractors who are not able to consume all the water they are entitled to under their contracts with the CVP may transfer water to other contractors, subject to review and approval by the Bureau. Such transfers often result in additional payments to the Reclamation Fund.

In 2009, about 600,000 acre-feet of water—about 10 percent of the water supplied in the CVP that year—was transferred among water users. Those transfers generally occurred under an expedited process using streamlined procedures for environmental reviews. (The expedited process allows certain water transactions to be automatically deemed to meet necessary requirements for trans-

fers.) However, under current law, that expedited process is not available to all contractors in the CVP.

S. 1759 would expand the number of contractors eligible to participate in transfers using the expedited process and CBO estimates that the volume of water voluntarily transferred would increase. Based on information from the Bureau, CBO estimates that developing streamlined procedures would cost \$4 million, assuming appropriation of the necessary amounts. Information from the Bureau also indicates that voluntary transfers would increase by between 200,000 and 300,000 acre-feet of water a year. In 2008 (the last year detailed information is available), the Reclamation Fund received incremental revenue of about \$7 per acre-foot of water from transfers. (Most transfers result in some incremental payment, but occasionally result in a loss of receipts.) On balance, CBO estimates that under S. 1759, the Reclamation Fund would receive an additional \$1 million to \$2 million more per year.

Pay-as-you-go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that enacting S. 1759 would reduce direct spending.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1759, THE WATER TRANSFER FACILITATION ACT OF 2009, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON DECEMBER 16, 2009

	By fiscal year, in millions of dollars—													
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020	
NET INCREASE OR DECREASE (–) IN THE DEFICIT														
Statutory Pay-As-You-Go Impact	0	–2	–2	–1	–1	–1	–1	–1	–1	–1	–1	–7	–12	

Intergovernmental and private-sector impact: S. 1759 contains no intergovernmental or private-sector mandates as defined in the UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Aurora Swanson; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1757.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1757, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 1759, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

STATEMENT OF MICHAEL L. CONNOR, COMMISSIONER,
BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

I am Mike Connor, Commissioner of the Bureau of Reclamation. I am pleased to be here today to provide the views of the Department of the Interior (Department) on S. 1759, the "Water Transfer Facilitation Act." The Department supports S. 1759 with modification as explained below. Further analysis would help to determine the role that this bill could play in providing improved flexibility and efficiency for water management in the Central Valley.

The Central Valley of California is experiencing a third year of drought which has strained the resources of both the State Water Project under the jurisdiction of the State of California, and the Central Valley Project (CVP) operated by Reclamation. The prolonged drought has created severe hardship especially to farmers, farm workers, and related economies on the west side of the San Joaquin River valley. The Department is cognizant of the need for creativity and flexibility in meeting the water demands of Californians served by the Central Valley Project. The Department supports facilitating the transfer of water from those areas having available water supplies to areas experiencing shortage to the extent that water transferred is not detrimental to the operations of the CVP, does not cause harm to third parties, and does not create adverse environmental consequences.

When they are done right, water transfers move water from willing sellers to willing buyers in transactions that can improve economic well-being, increase efficiency in water use, and protect against negative externalities. There are many situations where water transfers during periods of drought can be used to ensure that available water is used in areas where it is most needed, and S. 1759 is aimed at facilitating these efficient water transfers. We recognize the potential of voluntary water transfer as a mechanism to increase flexibility into our water management system and respond to changes in available water resources. However, we are also committed to implementing review processes for all water transfers that will effectively protect the broad range of interests that can be impacted by changes in water use. Our goals as a Department include ensuring efficient use of available water infrastructure as well as maintaining vibrant communities and protecting the environment.

Together with the California State Water Code, current Federal law in Section 3405(a)(1) of the Central Valley Project Improvement Act of 1992 (CVPIA) (Public Law 102-575, 106 Stat. 4709) prescribes those conditions under which CVP water is transferable. While the proposed legislation establishes that water transfers between and among specified South of Delta divisions are presumed to meet the historical and consumptive use requirements of subparagraphs (A) and (I) of section 3405(a)(1) of Public Law 102-575, the proposed legislation does not change the obligation of the Department to protect the public interest and the integrity of the CVP, and to otherwise act in accordance with the provisions of the CVPIA. To this end, if the proposed legislation is enacted, Reclamation will review its procedures and ensure that administrative guidelines are in place as necessary to assure that transfers of water continue to serve the overall public interest. Specifically, Reclamation will continue to ensure that transfers take place without significant adverse impacts to other water users, federal programs, Indian tribes, CVP operations, or the environment. We suggest that these guidelines be expressly incorporated into the items we report to Congress under Section 4(a) of the bill, under which Reclamation would submit reports to Congress on the status of efforts to help facilitate and improve the process for water transfers within the Central Valley and water transfers between the CVP and the State Water Project.

Under the CVPIA and contract provisions, Reclamation must approve proposed water transfers and cannot approve transfers unless the transfer is consistent with California water law. Transfers are on a willing buyer, willing seller basis, and Reclamation facilities can be used to deliver transferred water only when approved by Reclamation. Reclamation collects various charges, including operation and maintenance charges, incremental conveyance costs, and CVPIA restoration fund charges, together with the cost of service rates, as required by law from the entities that transfer the water (the transferors). Because of the diversity of CVP contractors and the many different scenarios under which water transfers take place, if S. 1759 were enacted there would probably be some financial impacts that Reclamation would only be able to fully calculate upon completion of a given transfer. For example, depending on the contract in place with specific CVP contractors, the legislation could generate additional revenue for the CVPIA restoration fund and for the San Joaquin River Restoration fund in some years in the Friant Unit of the CVP. In this area in 2008, Friant contractors could have transferred about 40,000 acre-feet to west-side CVP contractors in the San Luis Unit under the proposed legislation. The transferred water would have been subject to the CVPIA restoration fund charges (about \$9) under Title X of Public Law 111-11, Section 10009(c)(1)(B), as well as Friant surcharges, resulting in additional revenues to the Restoration Fund.

If enacted, S. 1759 could strengthen Reclamation's ability to facilitate appropriate water transfers. We would note, additionally, that Reclamation already has a robust water transfer program. This year in the CVP, Reclamation has facilitated the transfer of over 600,000 acre feet of water by and among CVP contractors, as well as users of State Water Project water. This has been a record for the Reclamation since on average there are approximately 250,000 acre feet of transfers which are processed by the CVP and State Water Project. For figures specific to only the federal CVP, Reclamation has signed off on a total of 168 individual transfers totaling approximately 435,286 acre feet of federal contract water. All were accomplished within the accelerated water transfers program using programmatic environmental documentation. An additional 9,156 acre feet was transferred among Sacramento Valley contractors using transaction-specific environmental documentation.

Separate from the transfer program, a large volume of water was delivered that was "rescheduled," or held over in storage, from the 2008 water year. Of the 337,307 acre feet of water rescheduled in San Luis Reservoir from 2008 into 2009, approximately 12,518 acre feet were eventually transferred, approximately 50,000 acre feet remains in San Luis, and the remainder was delivered to the party rescheduling it. Friant Division contractors rescheduled approximately 55,615 acre feet in Millerton Reservoir, and of that, 11,848 acre feet were transferred. Cross Valley Contractors rescheduled 6,063 acre feet of water from 2008, all of which together with 11,550 acre feet of 2009 contract supply was transferred to Westside contractors. These transfers were in addition to the accelerated transfers described above.

In addition to the suggested change to Section 4(a) above, the Department would also like to offer a technical change to the proposed legislation. The Department suggests that the initial reporting in Section 4(a) be set at six months from the date of enactment to provide adequate time for meaningful information to be available to Congress. Accordingly, we suggest editing the reference in Section 4(b) to delete "Not later than July 15, 2010" and to call for Reclamation to update the report every 180 days after the date on which the initial report is submitted to Congress.

With regard to Section 3 of S. 1759, the Fish and Wildlife Service has confirmed that the Service could provide a programmatic biological opinion to Reclamation on water transfers if this is determined to be appropriate. The consultation process would begin with a request from Reclamation for consultation accompanied by a biological assessment that describes Reclamation's water transfer program and evaluates the potential effects of the program on listed and proposed species and designated and proposed critical habitat and determines whether any such species or habitat are likely to be adversely affected by the pro-

gram. The Service could potentially expedite a programmatic biological opinion, subject to the availability of appropriations.

I would also like to note that Reclamation is currently working with the California Department of Water Resources in developing consistent evaluation criteria for a long-term, programmatic water transfer program designed to provide for water transfers from State and Federal contractors North of the Delta to contractors South of the Delta. These transfers will continue to be subject to the consumptive and beneficial use requirements in the State Water Code.

That concludes my prepared remarks. I would be pleased to answer any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1759, as ordered reported.

